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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD



In re: LABCAST

Application Serial No.: 75/813380

Current Applicant: Varian, Inc. (Prior Applicant: VanKel Technology Group)

08-16-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

Opposition No. 91150161

Innovative Programming Associates, Inc.

Opposer

v.

Varian, Inc.

Applicant

TRADEMARK TRIAL AND
APPEAL BOARD
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APPLICANT'S MOTION FOR INVOLUNTARY DISMISSAL FOR FAILURE TO TAKE
TESTIMONY

TO THE TRADEMARK TRIAL AND APPEAL BOARD:

Pursuant to 37 C.F. R. § 2.132(a), Applicant Varian, Inc. moves for involuntary dismissal of this opposition proceeding for Opposer's failure to take testimony, and avers as follows:

1. Opposer's testimony period closed on August 2, 2002.
2. Opposer has not taken testimony nor offered any other evidence.
3. Without waiving its right to offer evidence, Applicant moves for dismissal on the ground of the failure of Opposer to submit testimony or to otherwise prosecute this matter.
4. Applicant has a pending counter-claim under Section 18 of the Lanham Act to modify and/or restrict Opposer's registration. Conditioned on the Board's granting this present motion to dismiss Opposer's Notice of Opposition, Applicant conditionally dismisses its counter-claim under Section 18, but expressly reserves the right to take testimony or to continue to prosecute this counter-claim in the unlikely event Opposer is somehow able to later prosecute its opposition.

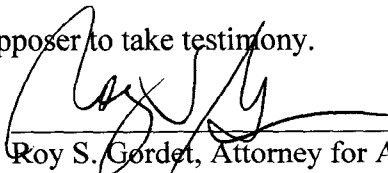
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Applicant in this way will promote judicial economy by permitting this entire matter to be dismissed in an expeditious manner.

5. This motion is being filed before the opening of Applicant's testimony period.

WHEREFORE, Applicant prays that this entire opposition proceeding, including Applicant's counter-claim, be dismissed for failure of Opposer to take testimony.

Dated: August 13, 2002


Roy S. Gordet, Attorney for Applicant, Varian, Inc.

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CERTIFICATE OF MAILING

I certify that this document is being deposited with the United States Postal Service, First-Class, postage pre-paid, addressed to Commissioner of Trademarks, Attn: TTAB, 2900 Crystal Drive, Arlington, VA 22202-3513 on August 13, 2002.

Dated: August 13, 2002

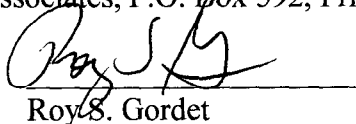

Roy S. Gordet

CERTIFICATE OF SERVICE BY MAIL

I certify that I served a copy of this document by mailing it with the United States Postal Service, U.S. First-Class Mail, addressed as follows:

Richard C. Woodbridge, Woodbridge & Associates, P.O. Box 592, Princeton, NJ 08542-0592 on August 13, 2002.

Dated: August 13, 2002


Roy S. Gordet